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Friday, September 15, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

LaVONA C. WRIGHT,

No. 99-11829

[Debtor](#)  (s).

_____ /

LESLIE WRIGHT,

[Plaintiff](#)  (s),

v.

A.P. No. 99-1130

LaVONA WRIGHT,

[Defendant](#)  (s).

_____ /

Memorandum of Decision

In state family law proceedings, it was determined that the real property at 350 Elgar Road, Blue Lake, California, is community property even though it stands in the name of debtor LaVona Wright alone. The state court ordered the property sold, and the proceeds distributed taking into account various credits and debits. One of those adjustments is the subject of a summary judgment motion in this [adversary proceeding](#).⁽¹⁾ The adjustment at issue is called a "Watts charge." It is a charge against a spouse's share of community property made to reimburse the community for the value of his or her exclusive use of the property after separation.⁽²⁾ The state courts deduct Watts charges and add compensation for amounts paid to maintain the property.⁽³⁾ The purpose of these adjustments is to effect a net overall equal division of the property. *In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, 553. The issue raised by the parties is whether the Watts charges are a "debt," as defined by § 101(12) of the [Bankruptcy Code](#).⁽⁴⁾ According to plaintiff Leslie Wright, the Watts charges are merely part of the process the state courts go through in order to reach an equal division of property. However, LaVona argues that it is a debt, subject to [discharge](#).⁽⁵⁾ According to her, unless the Watts charges are found nondischargeable under an applicable section of the Bankruptcy Code - a matter which requires a trial - they cannot be deducted by the state court in dividing community property. Upon reflection, it appears clear to the court that Watts charges are not debts subject to discharge, unless they are so large that a net liability is left after other debits and credits are given. Until such time as there is a net judgment against the debtor, all the state court is doing is setting off the claims of the spouses against each other.⁽⁵⁾ Pursuant to § 553(a) of the Code, even a discharged debt may be used as a setoff. See *In re De Laurentis Entertainment Group, Inc.*, 963 F.2d 1269, 1276-7 (9th Cir. 1992); *In re Buckenmaier*, 127 B.R. 233 (9th Cir.BAP 1991). Moreover, since the claims of the spouses arise under the "transaction" the common-law doctrine of recoupment applies so that any statutory limits on the right to setoff are inapplicable. *In re TLC Hospitals, Inc.*, -- F.3d - (9th Cir.2000). There is no equity in allowing LaVona to have her "Epstein credits" yet be immune from "Watts charges." To conclude and summarize, when a state court issues a judgment that a debtor owes a former spouse a sum certain, that judgment is a debt which will be discharged unless it falls within one of the exceptions to discharge identified in § 523(a) of the Bankruptcy Code. However, the state court is not precluded from assessing Watts charges in computing the amount of the judgment. It is unclear to the court whether anything other than Watts charges are at issue in this case. If LaVona is due to receive a check upon sale of the house, and has no other liability to Leslie, then Leslie is entitled to summary judgment declaring that the state court division of property is to be fully effected. If LaVona is ordered to pay any money to Leslie, then it shall be deemed without controversy that the Watts charges may be imposed to reduce LaVona's share of the community property notwithstanding her bankruptcy discharge. Counsel for Leslie shall submit an appropriate order, which counsel for LaVona has approved as to form.

Dated: September 14, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

1. Plaintiff has entitled his motion a motion for "Full Faith and Credit of State Court Judgment and Adjudication of Issues." The court treats it as a motion for summary judgment.

2. In re Marriage of Watts (1985) 171 Cal.App.3d 366, 378.
3. "Epstein credits." See In re Marriage of Epstein (1979) 24 Cal.3d 76.
4. "Debt" is defined as "liability on a [claim](#)". "Claim is defined in § 101(5)(A) as "right to payment."
5. The [automatic stay](#) is a temporary bar to the assertion of a setoff. § 362(a)(7). However, the court implicitly lifted this stay when it modified the automatic stay so as to allow the state court proceedings to go fo

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